

ORAL ARGUMENT NOT YET SCHEDULED

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NEW YORK, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents.

No. 21-1026
(consolidated with
No. 21-1041 and
No. 21-1069)

**JOINT MOTION FOR VOLUNTARY DISMISSAL
WITHOUT PREJUDICE**

Pursuant to Federal Rule of Appellate Procedure 42(b) and D.C. Circuit Rule 27(g), Petitioners and Respondents in case Nos. 21-1026, 21-1041 and 21-1069 (collectively, the “Parties”), hereby move for voluntary dismissal of the petitions in these consolidated cases without prejudice, with each party to bear its own costs and fees. The Parties submit this motion in lieu of a motion to govern future proceedings, which is due on October 11, 2023. All Petitioners in these consolidated cases are joining in this motion. They are the States of New York, California, Connecticut, Illinois, Maryland, Minnesota, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Washington and Wisconsin, the

Commonwealths of Massachusetts, Pennsylvania and Virginia, the District of Columbia, and the City of New York (State and Municipal Petitioners), and California Communities Against Toxics, Natural Resources Defense Council, Sierra Club, and Environmental Defense Fund (Environmental Petitioners). In support of this motion, the Parties state:

1. These consolidated cases were filed on January 19, 2021, to seek review of an EPA action titled “Increasing Consistency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process,” 85 Fed. Reg. 84,130 (December 23, 2020) (“Clean Air Act Benefit-Cost Rule”).

2. On February 23, 2021, this Court granted the Respondents’ unopposed motion to hold the matter in abeyance and directed the parties to file motions to govern by June 23, 2021. (Doc. #1886762).

3. On May 14, 2021, Respondent United States Environmental Protection Agency (“EPA”) published an interim final rule rescinding the Clean Air Act Benefit-Cost Rule. 86 Fed. Reg. 26,406 (May 14, 2021). That interim final rule opened a thirty-day comment period, and EPA committed to consider comments received within the comment period before issuing a final rule.

4. On June 24, 2021, the Court granted Respondents' unopposed motion to extend the abeyance to allow EPA to review and consider the comments on the interim final rule, and directed, *inter alia*, that the parties file motions to govern within thirty days of issuance of the final rule. (Doc. #1903705).

5. On July 13, 2023, EPA published the final rule rescinding the Clean Air Act Benefit-Cost Rule. 88 Fed. Reg. 44,710 (July 13, 2023).

6. On August 29, 2023, the Court issued an order granting the Parties' joint request to continue the abeyance until October 11, 2023, and directing the Parties to file motions to govern by that date. (Doc. #2014610).

7. No petition for review challenging the final rule was filed by September 11, 2023, which was the deadline for any legal challenge under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

Accordingly, since EPA has rescinded the action that is the subject of this litigation and no timely challenge to that rescission has been filed, the Parties request that the Court grant this motion to voluntarily dismiss these consolidated Petitions for Review without prejudice, with each party to bear its own costs and fees.

Dated: October 11, 2023

Respectfully submitted,

LETITIA JAMES
Attorney General of New York
BARBARA D. UNDERWOOD
Solicitor General
JUDITH N. VALE
Deputy Solicitor General

/s/ Gavin G. McCabe¹
GAVIN G. McCABE
ANDREW G. FRANK
Assistant Attorneys General
Environmental Protection Bureau
28 Liberty Street, 19th Floor
New York, NY 10005
(212) 416-8469
gavin.mccabe@ag.ny.gov

*Counsel for Petitioner State of New
York*

¹ Counsel for the State of New York represents that the other parties listed in the signature blocks on this document consent to this filing.

ROB BONTA
Attorney General of California

/s/Erin S. Ganahl

ERIN GANAHL
MICAELA HARMS
JONATHAN A. WIENER
Deputy Attorneys General
MYUNG J. PARK
Supervising Deputy Attorney
General
EDWARD H. OCHOA
ROBERT W. BYRNE
Senior Assistant Attorneys
General
California Department of
Justice
1515 Clay Street, 20th Floor
Oakland, CA 94612
(510) 622-2100
erin.ganahl@doj.ca.gov

*Counsel for Petitioner State of
California by and through the
California Air Resources Board
and Rob Bonta, Attorney
General*

WILLIAM TONG
Attorney General of Connecticut

/s/Matthew I. Levine

MATTHEW I. LEVINE
Deputy Associate Attorney
General
SCOTT N. KOSCHWITZ
Assistant Attorney General
165 Capitol Avenue
Hartford, CT 06106
(860) 808-5250
scott.koschwitz@ct.gov

*Counsel for Petitioner State of
Connecticut*

KWAME RAOUL
Attorney General of Illinois

/s/ Jason James

JASON JAMES
Assistant Attorney General
Illinois Office of the Attorney
General
201 West Pointe Drive, Suite 7
Belleville, IL 62226
(872) 276-3583
Jason.James@ilag.gov

*Counsel for Petitioner State of
Illinois*

ANDREA JOY CAMPBELL
Attorney General of
Massachusetts

/s/ Turner Smith

TURNER SMITH
Deputy Chief & Assistant
Attorney General
Energy and Environment
Bureau
Office of the Attorney General
One Ashburton Place, 18th Fl.
Boston, MA 02108
(617) 727-2200
Turner.Smith@mass.gov

*Counsel for Petitioner
Commonwealth of
Massachusetts*

ANTHONY G. BROWN
Attorney General of Maryland

/s/ Joshua M. Segal

JOSHUA M. SEGAL
Assistant Attorney General
Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202
(410) 576-6446
jsegal@oag.state.md.us

*Counsel for Petitioner State of
Maryland*

KEITH ELLISON
Attorney General of Minnesota

/s/ Peter N. Surdo

PETER N. SURDO
Special Assistant Attorney
General
Minnesota Attorney General's
Office
445 Minnesota Street
Town Square Tower Suite 1400
Saint Paul, Minnesota 55101
(651) 757-1061
Peter.Surdo@ag.state.mn.us

*Counsel for Petitioner State of
Minnesota*

MATTHEW J. PLATKIN
Attorney General of New
Jersey

/s/ Lisa J. Morelli
LISA J. MORELLI
Deputy Attorney General
New Jersey Division of Law
25 Market Street
Trenton, New Jersey 08625
(609) 376-2740
Lisa.Morelli@law.njoag.gov

*Counsel for Petitioner State of
New Jersey*

RAUL TORREZ
Attorney General of New Mexico

/s/ Bill Grantham
BILL GRANTHAM
Assistant Attorney General
Consumer & Environmental
Protection Div.
New Mexico Office of the
Attorney General
201 Third Street NW, Suite 300
Albuquerque, NM 87102
(505) 717-3520
wgrantham@nmag.gov

*Counsel for Petitioner State of
New Mexico*

JOSHUA H. STEIN
Attorney General of North
Carolina

/s/Francisco J. Benzoni
FRANCISCO J. BENZONI
Special Deputy Attorney
General
North Carolina Department of
Justice
114 W. Edenton Street
Raleigh, NC 27603
(919) 716-6600
fbenzoni@ncdoj.gov

*Counsel for Petitioner State of
North Carolina*

ELLEN F. ROSENBLUM
Attorney General of Oregon

/s/Paul Garrahan
PAUL GARRAHAN
Attorney-in-Charge
STEVE NOVICK
Special Assistant Attorney
General
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4540
Paul.Garrahan@doj.state.or.us
Steve.Novick@doj.state.or.us

*Counsel for Petitioner State of
Oregon*

MICHELLE HENRY
Attorney General of
Pennsylvania

/s/Ann R. Johnston

ANN R. JOHNSTON
Senior Deputy Attorney
General
Pennsylvania Office of the
Attorney General
Strawberry Square
Harrisburg, PA 17120
(717) 705-6938
ajohnston@attorneygeneral.gov

*Counsel for Petitioner
Commonwealth of
Pennsylvania*

CHARITY R. CLARK
Attorney General of Vermont

/s/Nicholas F. Persampieri
NICHOLAS F. PERSAMPIERI
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-3171
nick.persampieri@vermont.gov

*Counsel for Petitioner State of
Vermont*

PETER F. NERONHA
Attorney General of Rhode
Island

/s/Alison B. Hoffman

ALISON B. HOFFMAN
Special Assistant Attorney
General
RI Office of Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400
ahoffman@riag.ri.gov

*Counsel for Petitioner State of
Rhode Island*

JASON MIYARES
Attorney General of Virginia

/s/Ross Phillips
ROSS PHILLIPS
Assistant Attorney General
Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
(804) 786-9532
rphillips@oag.state.va.us

*Counsel for Petitioner
Commonwealth of Virginia*

ROBERT W. FERGUSON
Attorney General of
Washington

/s/Chris Reitz

CHRIS REITZ
Assistant Attorney General
Washington State Attorney
General's Office
PO Box 40117
Olympia, WA 98504
(360) 480-9990
chris.reitz@atg.wa.gov

*Counsel for Petitioner State of
Washington*

BRIAN SCHWALB
Attorney General of the
District of Columbia

/s/Caroline S. Van Zile

CAROLINE S. VAN ZILE
Solicitor General
Office of the Attorney General
for the District of Columbia
400 6th Street, NW, Suite
8100
Washington, D.C. 20001
(202) 727-6609
caroline.vanzile@dc.gov

*Counsel for Petitioner District
of Columbia*

JOSHUA L. KAUL
Attorney General of Wisconsin

/s/Bradley J. Motl

BRADLEY J. MOTL
JENNIFER S. LIMBACH
Assistant Attorneys General
Wisconsin Department of
Justice
Post Office Box 7857
Madison, WI 53707-7857
(608) 267-0505
motlbj@doj.state.wi.us

*Counsel for Petitioner State of
Wisconsin*

SYLVIA O. HINDS-RADIX
New York City Corporation
Counsel

/s/ Christopher G. King

CHRISTOPHER G. KING
ALICE R. BAKER
Senior Counsels
New York City Law Department
100 Church Street
New York, NY 10007
(212) 356 2074
cking@law.nyc.gov

*Counsel for Petitioner City of
New York*

EARTHJUSTICE/s/Sean M. Helle

SEAN M. HELLE

Senior Attorney

Earthjustice

313 East Main Street

Bozeman, Montana 59715

shelle@earthjustice.org

(406) 581-7509

*Counsel for Petitioners**California Communities**Against Toxics and Sierra Club*NATURAL RESOURCES
DEFENSE COUNCIL/s/John Walke

JOHN WALKE

EMILY DAVIS

Natural Resources Defense
Council

1152 15th Street, NW, Suite 300

Washington, D.C. 20005

jwalke@nrdc.orgedavis@nrdc.org

(202) 289-6868

*Counsel for Petitioner Natural
Resources Defense Council*ENVIRONMENTAL
DEFENSE FUND/s/Vickie L. Patton

VICKIE L. PATTON

General Counsel

Environmental Defense Fund

2030 Broadway

Suite 300

Boulder, CO 80302

vpatton@edf.org

(303) 447-7215

*Counsel for Petitioners**Environmental Defense Fund*UNITED STATES
DEPARTMENT OF JUSTICE/s/Eric G. Hostetler

ERIC G. HOSTETLER

Attorney

Environmental Defense Section

U.S. Department of Justice

P.O. Box 7611

Washington, DC 20044

(202) 305-2326

eric.hostetler@usdoj.gov*Counsel for Respondents United
States Environmental Protection
Agency and Michael S. Regan*

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Joint Motion for Voluntary Dismissal complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2) because it contains 487 words. I further certify that this motion complies with the typeface requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it has been prepared using a proportionally spaced typeface (Century Schoolbook) in 14-point font.

Dated: October 11, 2023

/s/ Gavin G. McCabe

Gavin G. McCabe

Attorney for the State of New York